Chapter 4

Reward and Challenge

Enhancing Quality Administration

4.1 On conclusion of our investigations, I have the power to recommend improvement. I view this my public duty, to fulfill my role to enhance public administration. Before we finalise our recommendations, we will consult the organisations concerned by inviting their comments on our draft investigation reports in the case of full investigation. Even for cases processed by preliminary inquiries, we will also sound out the organisations before we firm up our suggestions. The object is to ensure that the measures we suggest are practical, realistic and reasonable.

4.2 As a rule, I do not recommend disciplinary action against staff of an organisation even where individual fault is established. Our role is to help improve systems and remedy processes, not to punish individuals. In any case, management and discipline are for the head of an organisation. Only in cases of blatant misconduct would I suggest consideration of disciplinary action by the organisation concerned.

4.3 This year, I made 103 recommendations after 38 full investigations and four direct investigations. I also put forward 237 suggestions in 1,857 cases concluded by RAC. Most of our recommendations and suggestions have been accepted by the organisations concerned (see **paras. 3.19 – 3.20** in Chapter 3). We monitor their implementation and review their progress. If the organisations concerned encounter genuine difficulties, say, because of unforeseen or changed circumstances, we will revisit the matter with them.

4.4 Every year, after The Ombudsman's Annual Report is tabled in the Legislative Council, the Administration submits a Government Minute to Honourable Members summarising the actions taken by the organisations concerned in implementing The Ombudsman's recommendations and suggestions.

4.5 The measures implemented by those organisations in response to our investigative work have resulted in visible improvement to public administration and services. These measures fall broadly into six areas:

(a) clearer guidelines for consistency or efficiency in operation;
(b) arrangements for more effective inter-departmental co-ordination;
(c) more efficient public enquiry and complaint handling;
(d) more client-friendly services;
(e) clearer information to the public; and
(f) training for staff.

4.6 **Annex 6** gives examples. These include new guidelines on taking food samples for laboratory testing, better coordination between departments in trying out temporary traffic arrangements; greater voice mailbox capacity for recording telephone enquiries; clearer instructions on marking schemes for public examination candidates and enhancement of staff understanding on processing of tenancy transfer cases.

Code on Access to Information

4.7 Last year I reported particularly on one aspect of my work related to the civil and political rights of citizens, namely, the citizen's right to access information held by the Administration. This right is recognised by Government in its Code on Access to Information ("the Code"): it requires Government departments to provide information they hold to the public upon request, unless there are valid reasons as specified in the Code not to do so. The accompanying "Guidelines for Departments" further requires that requests for information, even if not made specifically under the Code, should also be handled in the spirit of the Code. Under The Ombudsman Ordinance, I am charged with the responsibility to inquire into complaints of breach of the Code.

4.8 Public awareness of the existence of the Code is low but demand for access to information has been rising. This year, we received 15 related complaints (six last year) and concluded nine cases (two carried from last year). In handling these cases, we observed a lack of understanding of the Code among some Government departments. In several cases, the departments refused the requests either without providing any reasons or with reasons not specified in the Code. In other cases, the reasons cited for refusal showed obvious misunderstanding or serious misinterpretation of the Code. Particularly evident was a general lack of awareness that the spirit of the Code is for as open and transparent government as possible; and that information be given as much as practicable whether or not a request is made with specific reference to the Code. In one or two cases, even the Access to Information Officer displayed remarkable ignorance.

4.9 This is clearly not satisfactory or acceptable. The Code has been in force for over 11 years since 1996 and yet public knowledge of the Code remains so poor. Government must step up efforts to publicise the Code and to promote understanding, especially within the Civil Service.

Addressing Systemic Issues

4.10 Maladministration may just be isolated incidents resulting from mistakes by individual officers. However, at times, we see the same mistakes repeated and find them stemming from systemic defect. In concluding a case, we pay particular attention to whether the problems identified had appeared in more than one organisation or reflected more deep-rooted or general deficiencies within an organisation. Where they cannot be fully addressed or resolved on the basis of individual complaints, we draw them to the attention of the organisations concerned or the central Administration where justified. Where they require in-depth scrutiny, we conduct our own direct investigations even in the absence of complaints (see **paras. 2.13** of Chapter 2 and **3.16 – 3.17** of Chapter 3).

Water Seepage and the Joint Office

4.11 Water seepage has plagued many Hong Kong families for long, especially those living in aged multi-storey buildings. Every year, Government

receives hundreds of calls for assistance to deal with such problems. Our Office, in turn, regularly receives allegations of inaction in or poor handling of seepage cases. After a pilot initiated in December 2004, Government set up in mid-2006 a Joint Office with staff from the Buildings Department and the Food and Environmental Hygiene Department for a one-stop service, equipped with better technical know-how, to deal with seepage complaints territory-wide.

4.12 Despite good intentions, the initial operation of the Joint Office had many deficiencies and itself became the cause of a large number of complaints to our Office. This prompted us to initiate a direct investigation and we completed it in March this year. Apart from deficiencies in its procedures and practices, our investigation revealed several organisational defects. The Joint Office, despite its name, is loosely structured, void of a proper head with the necessary line of command and accountability. Furthermore, the exclusion of the Water Services Department ("WSD") made for difficulties in coordination and even cooperation. These problems came into sharp focus with WSD's reluctance to recognise the findings of Joint Office investigations and the disagreement among the three departments over who should take enforcement action and which Ordinance should be invoked. While we appreciate that they have some grounds for their stance, we cannot accept that such disagreement should be allowed to drag on, leaving families in frustration over their to-ing and fro-ing with the departments or in agony over the nuisance from seepage. Certainly, the public expect solution, one way or the other. If Government departments see no role for themselves on specific incidents, they should so inform the complainants clearly stating the reason(s) for their stance.

4.13 That said, it should be noted that maintenance of private buildings including seepage is the responsibility of the owners and should be resolved by the parties involved. Owners have a duty to keep their private property in good repair and the one causing the seepage has the onus to ascertain the cause and to rectify the problem.

Street Management and Coordination

4.14 The inadequate inter-departmental coordination shown in the Joint Office is even more vividly manifested in the handling of street management issues, another major source of public concern and irritation. In this connection, the most common problem is the unauthorised extension of business space by shops, hawker pitches and restaurants. Another feature, more frequently encountered in the New Territories, is the illegal parking of bicycles. Skips without permission to collect waste from building works or items for recycling are yet another on-street phenomenon. A newer street management issue is posed by retractable stands, often manned by aggressive sales persons.

4.15 Typically, these problems fall marginally within the jurisdiction of a cross-section of enforcement departments, with much grey area in determining the laws applicable. Consequently, no single department can effectively eliminate the problem on its own even

after repeated action. Meanwhile, the public views this as a measure of maladministration. Worse still, in some cases, the departments concerned chose to withhold action until consensus on responsibility could be reached.

4.16 To address these issues, we have declared a direct investigation into Government measures for street management. A few citizens have already responded to our appeal for information and given us their views.

Challenges from Parties

4.17 Under The Ombudsman Ordinance, my decisions on whether to undertake an inquiry and my conclusions on completion of inquiries are final. However, I am prepared to review my decisions and conclusions where new information or fresh perspectives are presented by complainants and accept challenge from public organisations. I take these as opportunities to re-examine our procedures and practices where due. We regularly remind ourselves to stay alert to the need, and the scope, for our own improvement.

Revived Cases

4.18 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. We have specific procedures for handling "revived" cases. Invariably, they first go through the original investigator, who will examine the complainant's grounds for review and submit his or her view to the Chief Investigation Officer of the team. The latter will take a fresh look at the case, focusing on fresh evidence or new angles, if any, before submission of the request to the relevant Assistant Ombudsman for consideration. Requests for review are always scrutinised by my Deputy, before coming to me for determination and final approval.

4.19 This year, we received 310 requests for review, compared to 336 last year. I varied my decision after review in seven cases, compared with 11 last year.

4.20 Sometimes, a request for review is accompanied by a complaint against the case officer for alleged bias, insufficient thoroughness or poor conduct in their inquiries. Such request will first go to the head of my office administration to determine whether the allegations are against the conduct

Fig. 4.1

Revived Cases

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	**No**	**Yes**	**No**		
Decision varied	1		6			**7**
Decision upheld		289			14	**303**
						310

of my staff. If so, he will handle the complaint independently (see **paras. 5.17 – 5.20** of Chapter 5) and report his findings to me. However, most of the time, such allegations really arise from dissatisfaction with the findings or conclusions of our inquiries. As investigation findings are subject to my personal approval, such complaints are actually against my decisions, not my officers'. In such event, the request for review of the case will return to the original team Chief for reviewing the case as outlined above.

Judicial Review and Litigation

4.21 Apart from requesting review by The Ombudsman, individuals or organisations have recourse to the courts for judicial review of my decisions. This is a particularly significant provision both for the satisfaction of the complainants and for the integrity of my role and function since, in view of the statutory independence of The Ombudsman, my decision on a case is final.

4.22 During the year, in a case concerning the granting of Comprehensive Social and Security Assistance, the complainant applied for leave for judicial review against my decision. After consideration of the documents filed by the complainant, the High Court refused to grant leave.

4.23 Another complainant, in a case concerning the termination of tenancy regarding public housing, initiated civil proceedings against the case officer and an officer of the Housing Department. The case was struck out by the Court of First Instance after hearing.

Abuse of the Complaint System

4.24 Occasionally we see complainants "stretching" the complaint system to the point of abuse. In a number of cases, the complaints were lodged clearly for personal vendetta against business rivals, neighbours or other persons. In such cases, the complainants were attempting to use a Government authority either to put undue pressure on their rivals or to cause unnecessary inconvenience to them. When the authority refused to entertain such unfounded and unreasonable requests, the complainants then turned to complain against the authority.

4.25 In handling such complaints, we will firmly adhere to our fundamental value of maintaining impartiality and objectivity in investigation. Where warranted, we do not hesitate to comment on the complainants' behaviour. This has, on occasions, resulted in complaints and even abuse against our staff. However, for fairness and justice we remain firm in our mission and will always discharge our functions with professionalism, without fear or favour.

Jurisdictional Issues

Jurisdictional Review

4.26 Last year, I reported on completion of Part One of our jurisdictional review and presented my recommendations on organisations to be added to Schedule 1 to The Ombudsman Ordinance to place them within my purview; relaxing certain restrictions on my investigative powers in Schedule 2 to the Ordinance; and resolving some of the difficulties or uncertainties encountered by our officers in

discharging their duties.

4.27 During the year under report, I also completed Part Two of the review, which surveyed developments in ombudsmanship worldwide and examined their possible implications on our Office. I have also presented this part of my report to the Administration in November 2007.

Representation on Other Public Bodies

4.28 Since the setting up of the Independent Police Complaints Council ("IPCC"), The Ombudsman or his representative has been *ex officio* member of the Council. With the incident of the leakage of personal data relating to public complaints made against the Police and investigation of the matter by the Privacy Commissioner for Personal Data ("PCPD"), I raised doubts on the propriety of my continued participation in the work of IPCC. This was because PCPD is listed in Part I of Schedule 1 to The Ombudsman Ordinance and the IPCC Secretariat in Part II of the Schedule, which lists organisations subject to The Ombudsman's jurisdiction in the exercise of their functions relating to the Code on Access to Information. Both of them are, therefore, under my jurisdiction. To avoid any potential or perceived conflict of roles, I asked to be released from membership of IPCC. The Administration accepted my request in May 2007.

4.29 For years, there has been demand to establish IPCC as a statutory body, severing all ties with Government. In this connection, the Administration has long been preparing draft legislation. The data leakage incident and related developments heightened public awareness about the question of accountability of the IPCC Secretariat, and gave fresh impetus to demands for IPCC to sever links with the Administration. In June, the Administration gazetted the Independent Police Complaints Council Bill. The Bill contains a consequential amendment to remove the IPCC secretariat from Part II of Schedule 1 to The Ombudsman Ordinance. The Administration has explained that the amendment is necessary as the Code was introduced to ensure reasonable access to Government information and applies to Government departments only. Since the statutory IPCC will have its own staff, its Secretariat will no longer be a Government department. Given that the existing IPCC is not included in Part II of the Schedule, nor will the statutory IPCC, the Administration considers removing the IPCC Secretariat from the Schedule as a corollary to the establishment of the statutory IPCC.

4.30 I do not accept this argument. The proposed amendment will curtail the ambit of The Ombudsman Ordinance and is not logical or necessary. The Independent Commission Against Corruption, an independent statutory body and not a Government department or Government agency, is subject to the Code and in Part II of the Schedule to The Ombudsman Ordinance. I see no reason why the IPCC should be treated differently. I have conveyed these views to the Administration.

Overview

4.31 Our vision is to ensure that Hong Kong is served by a fair and efficient public administration.

To this end, we place great emphasis on identifying gaps and weaknesses in systems, procedures and practices in public administration and on recommending improvement. Our endeavours have borne fruits, as evidenced by the considerable improvement measures effected in many of the listed organisations.

4.32 The Administration has responded positively to our effort and always takes our views and recommendations seriously, implementing them faithfully. I sincerely appreciate this commitment of the Administration to good governance. On my part, I will continue to assist departments and public organisations in improving their services and support them in those endeavours.